

# EXHIBIT D

**Cokeplant Tonawanda - Re: Tonawanda Coke**

&gt;&gt;&gt; Maureen Brady 2/3/2010 9:52 AM &gt;&gt;&gt;

ATTORNEY CLIENT PRIVILEGE - NOT RELEASABLE UNDER FOIL

Gary Foersch called Cheryl Webster yesterday and told her that Henry Sandonato (retired Regional Air Engineer and Regional Solid and Hazardous Materials Engineer) had also been contacted by Mark Kamholz's private investigator. I called Henry yesterday and he returned my call this morning. Henry said the discussion did not last long and focused on Mark Kamholz's involvement. He was asked what he knew about the baffles. Henry told him baffles were required under the regulations and thought this was a clear cut violation. The PI showed him old Ton. Coke permits - one of their permits contained an exemption for the baffles because they were used infrequently. Henry told the PI he remembered that permit, but thought that permit became a facility wide permit and the exemption was eliminated. Henry was also asked about the broken tank and spillage. Henry said he wouldn't really consider it a spill since coal tar is solid at room temp, but told the PI that he is more familiar with the air aspects of this facility. Henry told the PI that he feels badly for Mark Kamholz and that he was surprised this was being handled criminally. He told the PI he thinks it is wrong to handle it criminally and it should be handled civilly. Henry told me (I don't know if he said this to the PI) that Don Crane dealt with EPA years ago when Crane worked at Donner Hanna Coke. Henry said the EPA wanted to check for opacity by standing right next to the coke oven battery instead of from a distance outside (which was the standard practice). Crane refused and the EPA eventually backed down. He said that Don Crane knows how to operate a coke oven battery, and that Donner Hanna was the cleanest battery in the country. When Crane took over the Ton. Coke facility he made that the cleanest in the country. Henry said that no one does this better than Don Crane. He said there will always be odors associated with coke ovens because of the process and that sulfur has a low odor threshold. He said that doesn't mean it's harmful though. I told him that DOJ will likely want to interview him. He is available this Friday and most of next week, and already plans to be in Buffalo next Wednesday for lunch.

&gt;&gt;&gt; Teresa Mucha 1/7/2010 11:12 PM &gt;&gt;&gt;

As you are aware, Gary Foersch contacted Larry Sitzman and advised that a private investigator retained by Mark Kamholtz came to his house to discuss the criminal charges filed against Mr. Kamholtz by EPA. On January 7, 2010, I spoke with Gary to discuss the particulars of that conversation. Gary said that the investigator, a former FBI Investigator, did not tape record the discussion and took limited notes. He explained that he was trying to piece various items of information together and hoped that Gary could fill in some missing information. The investigator only showed him three documents: EPA's criminal complaint, Tonawanda Cokes letter to DEC in the 1980s regarding the companys desire to reduce the height of the quench tower at the facility, and DEC's letter in response granting permission for that modification and reminder to the company that baffles were still required. Gary told the investigator that he was not familiar with the criminal complaint, since it was filed after his retirement, but was familiar with the two letters. He also

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confirmed that he did not inspect the quench tower during subsequent facility inspections to confirm if the company installed the equipment.

The inspector said that Mr. Kamholtz was surprised of EPA's decision to proceed criminally and asked Gary if he thought that course of action was routine or if it was an extreme response to the lack of baffles. Gary replied that he was surprised that EPA filed criminal charges over the baffle issue since he did not feel that violation rose to that level. He explained that he thought the matter would have been handled through a civil action with a civil penalty and requirement for the installation of the baffle. He also expressed his opinion that the baffle issue is not as important as determining the source of the benzene emissions at the facility which was what DEC was focusing on in order to address that problem.

The investigator did not ask any questions regarding J.D. Crane or any other employee of Tonawanda Coke. He did, however, ask about Gary's past relationship and interactions with Mr. Kamholtz. Gary replied that Mr. Kamholtz had been very cooperative with the Department. He also said that he would call Mr. Kamholtz with complaints that were received by the Department or issues noted during inspections and Mr. Kamholtz would eventually correct the problem. He also explained one situation where Mr. Kamholtz ran into resistance with a plant manager in correcting a problem and Mr. Kamholtz had to go over that person's head and speak directly with J. D. Crane to get the matter resolved.

The investigator also asked Gary for his opinion on how he thought the matter progressed to the level of criminal charges being filed. Gary noted that the formation of the citizen group brought more attention to this matter, including a great deal of media coverage. He also said that identification of benzene emissions raised a lot of concern and brought more attention to the company. In addition, Gary said that Mr. Crane is a very difficult person to deal with and opined that Mr. Crane's lack of cooperation may be behind the EPA's decision to proceed criminally.

The investigator said he would e-mail Gary a copy of EPA's criminal complaint (which he has not yet received) and asked if he could contact him in the future which Gary said was fine. After our discussion, however, Gary agreed to not speak to that investigator or any other representative working on Mr. Kamholtz's behalf without a DEC attorney present. I also reminded Larry Sitzman and Cheryl Webster to not speak to anyone working for Mr. Kamholtz regarding EPA's criminal action without a DEC attorney.

As an aside, Gary said he could not recall everything that was discussed during his meeting with the investigator. He will contact me if he thinks of anything else that was not mentioned. Please let me know if you have any questions. Thanks, Terri